

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 5 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LENIN GARCIA,

Plaintiff-Appellant,

v.

GINA PICKETT, Correctional Counselor I;
et al.,

Defendants-Appellees.

No. 16-56302

D.C. No. 3:16-cv-01606-CAB-BGS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

California state prisoner Lenin Garcia appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee after denying Garcia's application to proceed in forma pauperis ("IFP") on the basis that Garcia has three strikes under the Prison Litigation Reform Act, 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 1915(g). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Washington v. L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048, 1054 (9th Cir. 2016). We affirm.

The district court properly dismissed Garcia's action because three of Garcia's prior federal actions constitute strikes, and Garcia failed to pay the filing fee. *See* 28 U.S.C. § 1915(g) (precluding prisoner from proceeding IFP where prisoner has previously brought three or more actions or appeals that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted); *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (defining "frivolous" as having no basis in law or fact).

AFFIRMED.